1947. File No. O/Tramways/47

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Legal DEPARTMENT
"A" BRANCH

Subject:— Tramways

Opinions under the Bombay Tramways Act, 1874.

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Bombay Tramways Act. Breach of By-laws made thereunder.

The view taken by the Deputy Secretary (P.W.D.) is correct. Although the breach of a by-law is non-cognizable and the Police cannot take action, there would be no legal objection to the committee prosecuting for the breach of a by-law under section 25 of the Bombay Tramways Act, 1874 (see Emp. v. Sorab Alpaiwalla, 21 Bom. L.R. p.1103).

P.M.Lal.
18/11
Remembrancer of Legal Affairs.

U.R. to P.W.D. No.11015 dated the 19th November 1947.

S.I./9/5/56. 4c.

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The legal position has been examined afresh. It does seem that in the case of Emperor v. C.S.Modi, '36 Bombay Law Reporter p.369, the division bench of our High Court held that it was for the bye-laws and not for the Magistrate to impose a fine, the duty of the Magistrate being confined to the recovery of the fine so imposed, and that the conviction was, therefore, illegal. It was unfortunate that the earlier case of Emperor v. Sorab Alpaiwalla, 21 Bombay Law Reporter p.1103, was not cited in argument or otherwise brought to the notice of the judges who decided Modi's case. However, on going through both these cases, I feel that the view taken by Beaumont C.J. in Emperor v. Modi is the correct view. The material provisions are contained in sections 25 and 26 of the Bombay Tramways Act, 1874, and from these provisions it would follow that it would not be feasible even to make a bye-law to the effect that the breach thereof shall, on conviction, be punishable by a Magistrate.

2. I am not quite satisfied that an amendment of the law is necessary, The procedure outlined in sections 25 and 26 should be sufficient for the purpose, and the difficulties pointed out by the General Manager are more administrative than legal. In any case, I am not in favour of making such petty offences cognizable by an amendment of the Act. If it is decided to amend the Act, we might introduce therein a provision to the effect that a breach of the bye-law may, on conviction, by a Magistrate, be made punishable.

P.M.Lal.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.13451, dated the 27th December 1947.

S.I./9/5/56. 4c.